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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Albania, Algeria, Angola, Argentina, Armenia, Bangladesh, Belarus, Belize, Benin, Bolivia (Plurinational State of), Brazil, Cape Verde, Chile, Colombia, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Ecuador, Egypt, El Salvador, Eritrea, Ethiopia, Guatemala, Haiti, Honduras, Indonesia, Iraq, Kenya, Kyrgyzstan, Mali, Mauritania, Mexico, Morocco, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Senegal, Sri Lanka, Tajikistan, Uganda and Uruguay: revised draft resolution

Protection of migrants

The General Assembly,

Recalling all its previous resolutions on the protection of migrants, the most recent of which is resolution 63/184 of 18 December 2008, and recalling also Human Rights Council resolution 12/6 of 1 October 2009,

Reaffirming the Universal Declaration of Human Rights,[1] which proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Reaffirming also that everyone has the right to freedom of movement and residence within the borders of each State, and to leave any country, including his own, and return to his country,

Recalling the International Covenant on Civil and Political Rights[2] and the International Covenant on Economic, Social and Cultural Rights,[2] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[3]

[1] Resolution 217 A (III).
[2] See resolution 2200 A (XXI), annex.
[3] United Nations, *Treaty Series*, vol. 1465, No. 24841.

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the Convention on the Elimination of All Forms of Discrimination against Women,[4] the Convention on the Rights of the Child,[5] the International Convention on the Elimination of All Forms of Racial Discrimination,[6] the Convention on the Rights of Persons with Disabilities,[7] the Vienna Convention on Consular Relations[8] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[9]

Recalling also the provisions concerning migrants contained in the outcome documents of all major United Nations conferences and summits, including the Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development,[10] which recognizes that migrant workers are among the most vulnerable in the context of the current crisis,

Recalling further Commission on Population and Development resolutions 2006/2[11] of 10 May 2006 and 2009/1[12] of 3 April 2009,

Taking note with appreciation of the *Human Development Report 2009* of the United Nations Development Programme, entitled "Overcoming barriers: Human mobility and development",[13]

Taking note of advisory opinion OC-16/99 of 1 October 1999 on the Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law and advisory opinion OC-18/03 of 17 September 2003 on the Juridical Condition and Rights of Undocumented Migrants, issued by the Inter-American Court of Human Rights,

Taking note also of the judgments of the International Court of Justice of 31 March 2004 in the case concerning *Avena and Other Mexican Nationals*,[14] and of 19 January 2009 regarding the Request for interpretation[15] of the *Avena* judgment, and recalling the obligations of States reaffirmed in both decisions,

Underlining the importance of the Human Rights Council in promoting respect for the protection of the human rights and fundamental freedoms of all, including migrants,

Recognizing the increasing participation of women in international migration movements,

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[4] Ibid., vol. 1249, No. 20378.

[5] Ibid., vol. 1577, No. 27531.

[6] Ibid., vol. 660, No. 9464.

[7] Resolution 61/106, annex I.

[8] Ibid., vol. 596, No. 8638.

[9] Ibid., vol. 2220, No. 39481.

[10] See resolution 63/303.

[11] See *Official Records of the Economic and Social Council, 2006, Supplement No. 5* (E/2006/25), chap. I, para. 2.

[12] Ibid., *2009, Supplement No. 5* (E/2009/25), chap. I, para. 2.

[13] United Nations Development Programme, *Human Development Report 2009* (Palgrave Macmillan, 2009).

[14] See *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 4* (A/59/4), chap. V, sect. A.23; see also *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004*, p. 12.

[15] Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning *Avena and Other Mexican Nationals (Mexico v. United States)*, Mexico v. United States, Judgment, General List No. 139, ICGJ 349 (ICJ 2009).

Recalling the High-level Dialogue on International Migration and Development, held in New York on 14 and 15 September 2006 for the purpose of discussing the multidimensional aspects of international migration and development, which recognized the relationship between international migration, development and human rights,

Noting the second and third meetings of the Global Forum on Migration and Development, held in Manila from 27 to 30 October 2008 and in Athens from 2 to 5 November 2009, respectively, recognizing the discussion on the "Inclusion, protection and acceptance of migrants in society — linking human rights and migrant empowerment for development" as a step to address the multidimensional nature of international migration, and taking note with appreciation of the generous offers of the Governments of Mexico and Spain to host the Global Forum meetings in 2010 and 2011, respectively,

Recognizing the cultural and economic contributions made by migrants to receiving societies and their communities of origin, as well as the need to identify appropriate means of maximizing development benefits and responding to the challenges which migration poses to countries of origin, transit and destination, especially in the light of the impact of the economic and financial crisis, and committing to ensuring dignified, humane treatment with applicable protections and to strengthening mechanisms for international cooperation,

Emphasizing the global character of the migratory phenomenon, the importance of international, regional and bilateral cooperation and dialogue in this regard, as appropriate, and the need to protect the human rights of migrants, particularly at a time in which migration flows have increased in the globalized economy and take place in a context of new security concerns,

Bearing in mind that policies and initiatives on the issue of migration, including those that refer to the orderly management of migration, should promote holistic approaches that take into account the causes and consequences of the phenomenon, as well as full respect for the human rights and fundamental freedoms of migrants,

Stressing the importance of regulations and laws regarding irregular migration being in accordance with the obligations of States under international law, including international human rights law,

Concerned about the large and growing number of migrants, especially women and children, who place themselves in a vulnerable situation by attempting to cross international borders without the required travel documents, and recognizing the obligation of States to respect the human rights of those migrants,

Stressing that penalties and the treatment given to irregular migrants should be commensurate with their infraction,

Recognizing the importance of having a comprehensive and balanced approach to international migration, and bearing in mind that migration enriches the economic, political, social and cultural fabric of States and the historical and cultural ties that exist among some regions,

Recognizing also the obligations of countries of origin, transit and destination under international rights law,

Underlining the importance for States, in cooperation with non-governmental organizations, to undertake information campaigns aimed at clarifying opportunities, limitations and rights in the event of migration, so as to enable everyone to make informed decisions and to prevent anyone from utilizing dangerous means to cross international borders,

1. *Calls upon* States to promote and protect effectively the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability;

2. *Expresses its concern* over the impact of the current economic and financial crisis on international migrations and migrants, and in that regard urges Governments to combat unfair and discriminatory treatment of migrants, particularly migrant workers and their families;

3. *Reaffirms* the rights set forth in the Universal Declaration of Human Rights[1] and the obligations of States under the International Covenants on Human Rights,[2] and in this regard:

(a) Strongly condemns the manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and the stereotypes often applied to them, including on the basis of religion or belief, and urges States to apply and, where needed, reinforce the existing laws when xenophobic or intolerant acts, manifestations or expressions against migrants occur, in order to eradicate impunity for those who commit xenophobic and racist acts;

(b) Expresses concern at legislation and measures adopted by some States that may restrict the human rights and fundamental freedoms of migrants, and reaffirms that, when exercising their sovereign right to enact and implement migratory and border security measures, States have the duty to comply with their obligations under international law, including international human rights law, in order to ensure full respect for the human rights of migrants;

(c) Calls upon States to ensure that their laws and policies, including in the areas of counter-terrorism and combating transnational organized crime, such as trafficking in persons and smuggling of migrants, fully respect the human rights of migrants;

(d) Also calls upon States that have not done so to consider signing and ratifying or acceding to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families[9] as a matter of priority, and requests the Secretary-General to continue his efforts to promote and to raise awareness of the Convention;

(e) Takes note of the report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on its ninth and tenth sessions;[16]

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[16] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 48* (A/64/148).

4. *Also reaffirms* the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their immigration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, and therefore:

(a) Calls upon all States to respect the human rights and the inherent dignity of migrants and to put an end to arbitrary arrest and detention and, where necessary, to review detention periods in order to avoid excessive detention of irregular migrants, and to adopt, where applicable, alternative measures to detention;

(b) Urges all States to adopt effective measures to prevent and punish any form of illegal deprivation of liberty of migrants by individuals or groups;

(c) Takes note with appreciation of the measures adopted by some States to reduce detention periods in cases of undocumented migration and in the application of domestic regulations and laws regarding irregular migration;

(d) Takes note with appreciation of the successful implementation by some States of alternative measures to detention in cases of undocumented migration as a practice that deserves consideration by all States;

(e) Requests States to adopt concrete measures to prevent the violation of the human rights of migrants while in transit, including in ports and airports and at borders and migration checkpoints, to train public officials who work in those facilities and in border areas to treat migrants respectfully and in accordance with the law, and to prosecute, in conformity with applicable law, any act of violation of the human rights of migrants, inter alia, arbitrary detention, torture and violations of the right to life, including extrajudicial executions, during their transit from their country of origin to the country of destination and vice versa, including their transit through national borders;

(f) Underlines the right of migrants to return to their country of citizenship, and recalls that States must ensure that their returning nationals are duly received;

(g) Reaffirms emphatically the duty of States parties to ensure full respect for and observance of the Vienna Convention on Consular Relations,[8] in particular with regard to the right of all foreign nationals, regardless of their immigration status, to communicate with a consular official of the sending State in case of arrest, imprisonment, custody or detention, and the obligation of the receiving State to inform the foreign national without delay of his or her rights under the Convention;

(h) Requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association;

(i) Encourages all States to remove unlawful obstacles that may prevent the safe, transparent, unrestricted and expeditious transfer of remittances, earnings, assets and pensions of migrants to their country of origin or to any other countries, in conformity with applicable legislation, and to consider, as appropriate, measures to solve other problems that may impede such transfers;

(j) Recalls that the Universal Declaration of Human Rights recognizes that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him or her;

5. *Emphasizes* the importance of protecting persons in vulnerable situations, and in this regard:

(a) Welcomes immigration programmes, adopted by some countries, that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious, tolerant and respectful environment, and encourages States to consider the possibility of adopting these types of programmes;

(b) Encourages all States to develop international migration policies and programmes that include a gender perspective, in order to adopt the necessary measures to better protect women and girls against dangers and abuse during migration;

(c) Calls upon States to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children, ensuring that the best interests of the child are a primary consideration in their policies of integration, return and family reunification;

(d) Encourages all States to prevent and eliminate discriminatory policies that deny migrant children access to education;

(e) Urges States to ensure that repatriation mechanisms allow for the identification and special protection of persons in vulnerable situations, including persons with disabilities, and take into account, in conformity with their international obligations and commitments, the principle of the best interest of the child and family reunification;

(f) Urges States parties to the United Nations Convention against Transnational Organized Crime[17] and supplementing protocols thereto, namely, the Protocol against the Smuggling of Migrants by Land, Sea and Air[18] and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,[19] to implement them fully, and calls upon States that have not done so to consider ratifying or acceding to them as a matter of priority;

6. *Stresses* the importance of international, regional and bilateral cooperation in the protection of the human rights of migrants, and therefore:

(a) Requests all States, international organizations and relevant stakeholders to take into account in their policies and initiatives on migration issues the global character of the migratory phenomenon and to give due consideration to international, regional and bilateral cooperation in this field, including by undertaking dialogues on migration that include countries of origin, destination and transit, as well as civil society, including migrants, with a view to addressing, in a comprehensive manner, inter alia, its causes and consequences and the challenge of undocumented or irregular migration, granting priority to the protection of the human rights of migrants;

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[17] United Nations, *Treaty Series*, vol. 2225, No. 39574.

[18] Ibid., vol. 2241, No. 39574.

[19] Ibid., vol. 2237, No. 39574.

(b) Requests Member States, the United Nations system, international organizations, civil society and all relevant stakeholders, especially the United Nations High Commissioner for Human Rights and the Special Rapporteur on the human rights of migrants, to ensure that the perspective of the human rights of migrants is included among the priority issues in the ongoing discussions on international migration and development within the United Nations system, and in this regard, underlines the importance of adequately taking into account the human rights perspective as one of the priorities of the informal thematic debate on international migration and development, to be held in 2011, as well as in the High-level Dialogue on International Migration and Development, which will take place during the sixty-eighth session of the General Assembly, in 2013, as decided by the Assembly in its resolution 63/225 of 19 December 2008;

(c) Invites the Chairperson of the Committee to address the General Assembly at its sixty-fifth session under the item entitled "Promotion and protection of human rights";

(d) Invites the Special Rapporteur to present his reports to the General Assembly at its sixty-fifth session under the item entitled "Promotion and protection of human rights";

7. *Requests* the Secretary-General to provide the resources necessary, from within existing resources of the United Nations, for the Committee to meet for a maximum of three weeks in one session or two separate sessions in 2010, as required by the number of reports submitted to the Committee, and requests the Committee to further consider ways of improving the effectiveness of its working sessions and to report to the General Assembly on the use of its meeting time;

8. *Also requests* the Secretary-General to report on the implementation of the present resolution at its sixty-fifth session and to include in that report an analysis of the ways and means to promote the human rights of migrants, in particular children, and decides to examine the question further under the item entitled "Promotion and protection of human rights".